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Via E-Mail and U.S. Mail

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Department of Planning, Building and
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City of San Jose, Planning Division
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San Jose, CA 95113
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Re: Initial Study/Negative Declaration for Samaritan Court Medical
Office. Project File Nos.: PDC14-008 and PD14-013

Dear Director Freitas:

Our firm represents a group of citizens in the Lost Oaks Drive/National Avenue neighborhood concerned with the potential impacts of the proposed Samaritan Court Medical Office Project ("Project"). We submit the following comments on the September, 2014 Initial Study and Negative Declaration ("IS/ND") for the Project. As detailed below, the City has failed to comply with the California Environmental Quality Act, Public Resources Code sections 21000, *et. seq.* ("CEQA") in its review of the environmental impacts of the proposed Project. Further, approval of the Project would violate state Planning and Zoning Law, Government Code sections 65000 *et seq.* The City may not approve the Project until (1) it is revised to comply with state Planning and Zoning law, and (2) environmental review of the revised project fully complies with CEQA.

Instead of proposing a medical offices project that complies with the City's current zoning for the site, the Project developer asks the City to waive applicable zoning regulations, most notably height limits, in order to maximize the Project's square footage and minimize costs. Community members have repeatedly expressed their concerns to the City regarding the Project's incompatibility with the adjacent residential

neighborhoods. These concerns have not been addressed by the developer's minor modifications to the Project.

The City should require the developer to revise its proposal to comply with current height limits and General Plan policies regarding neighborhood compatibility. The developer could easily do so by (1) reducing the size of the proposed development, or (2) providing parking in an underground structure and developing the same square footage with two, 2 story buildings on the site. Absent these modifications, the City may not approve the proposed Project as detailed below.

I. The Project Violates State Planning and Zoning Law Because it is Inconsistent with the General Plan.

State Planning and Zoning Law requires that all subordinate land use decisions, including zoning amendments, be consistent with the general plan. Gov. Code § 65860. A project is not consistent with a general plan if it conflicts with a plan policy that is fundamental, mandatory, and clear, even if the project is consistent with other general plan policies. *Families Unafraid to Uphold Rural El Dorado County v. El Dorado County Bd. of Sup'rs*, 62 Cal.App.4th 1332, 1341-42 (1998). Even in the absence of a direct conflict, a local agency may not approve a development project if it frustrates the general plan's policies and objectives. *Napa Citizens for Honest Government v. Napa County Bd. of Supervisors*, 91 Cal.App.4th 342, 377-79 (2001).

The Project violates these state law requirements because it conflicts with and frustrates clear policies within the Envision San Jose 2040 General Plan ("General Plan") to direct regional commercial development into identified zones and to allow neighborhood commercial development adjacent to residential communities only to the extent such development is compatible with the existing community character. The Project also fails to comply with General Plan requirements to protect public health by studying impacts before development projects are approved.

A. The Project Conflicts with Fundamental General Plan Policies to Protect Residential Neighborhoods from the Encroachment of Incompatible Land Uses.

The Project site is bordered on two sides by the National Avenue and Lost Oaks residential neighborhoods. These neighborhoods are characterized by single-family homes and peaceful tree-lined streets. The Project site is located on the south side of Samaritan Drive, which forms a buffer between these residential communities and the

more intense land uses on the north side of Samaritan Drive. Consistent with maintaining this buffer, the current zoning for the South side of Samaritan Drive is Commercial Office. This zoning is "intended to be a low-intensity office zone that allows for a scale of offices in or adjacent to residential neighborhoods." Zoning Code § 20.40.010(c)(1). It therefore limits heights to 35 feet (two-stories). *Id.* § 20.40.200. All of the buildings along the South side of Samaritan Drive are two-story buildings in compliance with maintaining this buffer zone.

The Project, in contrast, would introduce the only three-story building and multi-story parking structure on the south side of Samaritan Drive. *See* Attachment 1 (photographs). The parking structure would be located just 25 feet from residential back yards. This open-air structure and the proposed office building would tower over the adjacent one-story homes and bombard residents with noise and light inconsistent with a residential neighborhood.

Because it would introduce an intensified commercial use into this buffer zone, the Project conflicts with the following General Plan goals and policies that require new development (1) be compatible with residential neighborhoods, (2) be consistent with existing development patterns, and (3) provide for appropriate transitions to higher intensity areas:

- Goal CD-4 – Compatibility. Provide aesthetically pleasing streetscapes and new development *that preserves and builds on the unique characteristics of the local area* and contributes to a distinctive neighborhood or community identity.
- Policy CD-4.3 *Promote consistent development patterns along streets*, particularly in how buildings relate to the street, to promote a sense of visual order, and to provide attractive streetscapes.
- Policy CD-4.4 In non-growth areas, design new development and subdivisions *to reflect the character of predominant existing development* of the same type in the surrounding area through the regulation of lot size, street frontage, *height*, building scale, siting/setbacks, and building orientation.
- Policy CD-4.5 For new development in transition areas between identified Growth Areas and non-growth areas, use a combination of building setbacks, building step-backs, materials, building

orientation, landscaping, and other design techniques *to provide a consistent streetscape that buffers lower-intensity areas from higher intensity areas* and that reduces potential shade, shadow, massing, viewshed, or other land use compatibility concerns.

- Policy CD-4.9 For development subject to design review, ensure the design of new or remodeled structures is *consistent or complementary with the surrounding neighborhood fabric* (including but not limited to prevalent *building scale*, building materials, and orientation of structures to the street).
- Policy CD-1.1 Require the highest standards of architectural and site design, and *apply strong design controls* for all development projects, both public and private, for the enhancement and development of community character and *for the proper transition between areas with different types of land uses*.
- Policy ES-6.7. *Discourage health care facilities* or hospitals in areas where their operations can have *adverse impacts on surrounding uses or where surrounding uses can have adverse impacts* on health care facility patients, workers, or visitors.
- Goal VN-1 – Vibrant, Attractive, and Complete Neighborhoods. Develop new and *preserve and enhance existing neighborhoods* to be vibrant, attractive and complete.
 - Policy VN-1.10 Promote the preservation of positive character-defining elements in neighborhoods, such as architecture; design elements like setbacks, *heights, number of stories*, or attached/detached garages; landscape features; street design; etc.
 - Policy VN-1.11 *Protect residential neighborhoods from the encroachment of incompatible activities or land uses* which may have a negative impact on the residential living environment.
- Goal LU-11 – Residential Neighborhoods. Regulate the urban form, architectural quality and contextual compatibility of new construction and uses within the City's varied residential neighborhoods to *promote a*

residential neighborhood environment conducive to a high quality of life for neighborhood residents and visitors.

- Goal EC-1 – Community Noise Levels and Land Use Compatibility. *Minimize the impact of noise on people through noise reduction and suppression techniques, and through appropriate land use policies.*
 - Policy EC-1.1. *Locate new development in areas where noise levels are appropriate for the proposed use. . . . For sites with exterior noise levels of 60 dBA DNL or more, an acoustical analysis following protocols in the City-adopted California Building Code is required to demonstrate that development projects can meet this standard.*
 - Policy EC-1.2. Minimize the noise impacts of new development on land uses sensitive to increased noise levels.
 - Policy EC-1.3. *Mitigate noise generation of new nonresidential land uses to 55 dBA DNL at the property line when located adjacent to existing or planned noise sensitive residential . . . land uses.*
- Goal CD-8 – Building Height. *Regulate the height of new development to avoid adverse land use incompatibility while providing maximum opportunity for the achievement of the Envision General Plan goals for economic development and the provision of new housing within the identified Growth Areas.*
 - Policy CD-8.1 *Ensure new development is consistent with specific height limits established within the City's Zoning Ordinance and applied through the zoning designation for properties throughout the City.*
 - CD-8.2 Consider the Envision General Plan Community Design Goals, Policies and Implementation Actions, which provide guidance for the *appropriate regulation of building heights* to be implemented through the Zoning Ordinance.

**B. The Project Conflicts with the Project Site's
"Neighborhood/Community Commercial" Land Use Designation and
Fundamental General Plan Policies to Focus Intensification of Land
Uses in Specified "Growth Areas."**

The General Plan aims to reduce environmental impacts, foster transit use and walkability, and preserve the character of San Jose's established single-family residential neighborhoods. *See* General Plan, Chapter 6. In order to do so, one of its "key" strategies is to focus new growth and intensification of land uses in specifically identified "Growth Areas." The General Plan also allows limited commercial development within residential neighborhoods when such development would provide services to the local residents within walking or biking distance.

The Project conflicts with these key strategies by intensifying existing land uses outside of any of the General Plan's identified Growth Areas or Regional Commercial land use designations in a manner that significantly changes the character of the immediately adjacent residential neighborhoods. The Project is designed on a scale that clearly targets regional patrons arriving by automobile. This is demonstrated by the IS/ND traffic study, which concludes that the project would generate 3,463 new daily trips accessing the site from two freeways, SF-17 and SR-85, as well as local roads. IS/ND at 50, 52. This intense, regional-serving project conflicts with the Project site's "Neighborhood/Community Commercial" land use designation and the following General Plan goals and policies:

- Goal LU-2 – Growth Areas. *Focus new growth into identified Growth Areas to protect the quality of existing neighborhoods*, while establishing new mixed use neighborhoods with a compact and dense form that is attractive to the City's projected demographics i.e., a young and senior population, and that supports walking, provides opportunities to incorporate retail and other services in a mixed-use format, and facilitates transit use.
- Policy LU-4.3 *Concentrate new commercial development in identified growth areas* and other sites designated for commercial uses on the Land Use/Transportation Diagram. Allow new and expansion of existing commercial development within established neighborhoods *when such development is appropriately located and designed, and is primarily neighborhood serving.*

- Goal LU-5 – Neighborhood Serving Commercial. Locate viable *neighborhood-serving commercial uses* throughout the City in order to stimulate economic development, create complete neighborhoods, *and minimize vehicle miles traveled.*

C. The Project Conflicts with Mandatory General Plan Policies to Minimize the Footprint and Visibility of Parking Areas.

The General Plan requires developments to minimize the footprint and visibility of parking areas and utilize parking garages only where necessary as follows:

- Policy CD-1.17. Minimize the footprint and visibility of parking areas. Where parking areas are necessary, provide aesthetically pleasing and visually interesting parking garages with clearly identified pedestrian entrances and walkways. Encourage designs that encapsulate parking facilities behind active building space or screen parked vehicles from view from the public realm. Ensure that garage lighting does not impact adjacent uses, and to the extent feasible, avoid impacts of headlights on adjacent land uses.

The Project conflicts with this clear mandate because it proposes a 2 ½ story parking garage that is visible from both the front and back of the site when it is not necessary to do so. The Project's parking needs could easily be provided with a below-ground parking structure. Doing so would ensure that garage lighting and headlights do not impact adjacent residential uses.

D. The Project Conflicts with Mandatory General Plan Policies to Protect the Public Health.

General Plan policies require modeling, assessments, and consultations with state agencies to protect the public from Toxic Air Contaminates (TACs). The project is located within 1,000 feet of two freeways—significant sources of TACs, and the Project itself will generate TACs on site at the parking garage. Yet the IS/ND fails to follow the mandates of the following policies to protect the public from TACs.

- MS-11.1. *Require completion of air quality modeling* for sensitive land uses such as new residential developments that are located near sources of pollution such as freeways and industrial uses. Require new residential development projects and projects categorized as sensitive receptors to

incorporate effective mitigation into project designs or be located an adequate distance from sources of toxic air contaminants (TACs) to avoid significant risks to health and safety.

- MS-11.2 For projects that emit toxic air contaminants, *require project proponents to prepare health risk assessments* in accordance with BAAQMD-recommended procedures as part of environmental review and employ effective mitigation to reduce possible health risks to a less than significant level. Alternatively, require new projects (such as, but not limited to, industrial, manufacturing, and processing facilities) that are sources of TACs *to be located an adequate distance from residential areas* and other sensitive receptors.
- MS-11.7. *Consult with BAAQMD* to identify stationary and mobile TAC sources and determine the need for and requirements of a health risk assessment for proposed developments.

As detailed above, the proposed Project conflicts with numerous fundamental, mandatory, and clear General Plan policies. Therefore, the City may not approve this Project. *Land Waste Management v. Contra Costa County Bd. of Supervisors*, 222 Cal.App.3d 950, 958 (1990) (“[i]ssuance of a permit inconsistent with zoning ordinances or the general plan may be set aside and invalidated as ultra vires.”).

II. The IS/ND Ignores or Downplays the Project’s Significant Impacts.

CEQA provides that a lead agency may issue a negative declaration and avoid preparing an environmental impact report (“EIR”) only if “[t]here is no substantial evidence, in light of the whole record before the lead agency, that the Project may have a significant effect on the environment.” Pub. Res. Code § 21080(c). An initial study must provide the factual basis, with analysis included, for making the determination that no significant impact will result from the Project. *See* Cal. Code Regs. tit. 14, § 15063(d)(3) (hereinafter “CEQA Guidelines”). In making this determination, the agency must consider the direct and indirect impacts of the Project as a whole (CEQA Guidelines § 15064(d)), as well as the Project’s growth-inducing and cumulative impacts. *See City of Antioch v. City Council of Pittsburg*, 187 Cal.App.3d 1325, 1333 (1986).

An agency must prepare an environmental impact report (“EIR”) whenever it is presented with a “fair argument” that a project may have a significant effect on the environment, even if there is also substantial evidence to indicate that the impact is not

significant. *No Oil, Inc. v. City of Los Angeles*, 13 Cal.3d 68, 75 (1976). The fair argument test reflects a “low threshold requirement for initial preparation of an EIR” and expresses “a preference for resolving doubts in favor of environmental review.” *Stanislaus Audubon Society v. County of Stanislaus*, 33 Cal.App.4th 144, 151 (1995).

The IS/ND for the proposed Project fails to comply with these guidelines. As detailed below, the IS/ND ignores significant Project impacts and fails to provide adequate information to make an informed judgment about Project impacts. Moreover, the IS/ND fails to propose adequate mitigation measures for the proposed Project. In view of the information submitted below, as well as that contained in the comments of the neighbors that are familiar with the area, the City must prepare an EIR before it can approve this Project.

A. The IS/ND Fails to Adequately Describe the Project.

“An accurate, stable and finite project description is the sine qua non of an informative and legally sufficient EIR.” *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus*, 27 Cal.App.4th 713, 727 (1994), quoting *County of Inyo v. City of Los Angeles*, 71 Cal.App.3d 185, 193 (1977). As a result, courts have found that even if an EIR is adequate in all other respects, the use of a “truncated project concept” violates CEQA and mandates the conclusion that the lead agency did not proceed in a manner required by law. *San Joaquin Raptor*, 27 Cal.App.4th at 729-30. Furthermore, “[a]n accurate project description is necessary for an intelligent evaluation of the potential environmental effects of a proposed activity.” (*Id.* at 730 [citation omitted].) Thus, an inaccurate or incomplete project description renders the analysis of significant environmental impacts inherently unreliable.

The IS/ND fails to accurately describe many aspects of the Project critical to evaluating its impacts, including, for example, the following information:

- What hours will the offices be open? Will any labs be operating after-hours?
- What ventilation, HVAC, and other noise-producing equipment will generate external noise? Where will they be located?
- What hours will the parking garage be open?
- What lighting will be used for the parking garage?

- What emissions will be generated from construction of the Project?
- What emissions will be generated by operation of the proposed facilities?

Without this and other essential information, it is not possible for the City or the public to adequately evaluate Project impacts.

A. The IS/ND Fails to Adequately Analyze the Project's Aesthetic Impacts, Which are Clearly Significant.

The IS/ND substantially understates the Project's aesthetic impacts and fails to provide evidentiary support for its conclusion that development conditions would mitigate the Project's aesthetic impacts to an insignificant level. In fact, there is substantial evidence to the contrary.

The Project will substantially degrade the existing visual character and quality of the site and its surroundings. *Citizens for Responsible and Open Government v. City of Grand Terrace*, 160 Cal.App.4th 1323, 1337 (2008) (finding a significant change in the aesthetic environment and interference with scenic views of the public by introducing large two- and three- story buildings into a primarily single-family, residential neighborhood.) As discussed above, the Project introduces a massive, 3 story building and 2 ½ story above-ground parking garage in a 2 story zone that serves as a buffer between single-family residential neighborhoods and more intense developments to the north. No other parking garages or 3 story buildings are located in this zone. Further, this development will be visible not only from Samaritan Drive, but also from residences to the south and west of the site. The IS/ND concludes that landscaping and existing redwood trees to the south and east will screen the building and garage. IS/ND at 18. However, this is belied by the evidence.

To begin with, landscaping does not address the abrupt change in existing visual conditions along the south of Samaritan Drive. Further, as shown in Attachment 2, the existing trees on site are neither thick enough nor tall enough to effectively screen the proposed 57-foot tall development and there are portions of the property line with no trees at all. Any new landscaping will take several decades to reach an effective screening height and therefore cannot be considered effective mitigation. We understand that the developer has submitted renderings that purport to simulate the visual impacts of the development. But these drawings are clearly inaccurate (they show the top of the 57-foot building below power lines that are no more than 30-feet tall) and do not demonstrate how the development will actually be perceived due to misleading angles

and lines of site. An EIR with visual simulations must be prepared to adequately analyze the Project's aesthetic impacts.

In addition, the IS/ND entirely fails to analyze the Projects' visual impacts from light and glare. The IS/ND admits that the project's buildings and outdoor parking areas would introduce additional sources of light and glare. However, it fails to analyze whether this light would have a significant impact. The City's failure "to gather information and undertake an adequate environmental analysis" is reason alone to invalidate the IS/ND. *City of Redlands v. County of San Bernardino*, 96 Cal. App. 4th 398, 406 (2002). This is because "[i]f the local agency has failed to study an area of possible environmental impact, a fair argument may be based on the limited facts in the record. Deficiencies in the record may actually enlarge the scope of fair argument by lending a logical plausibility to a wider range of inferences." *Sundstrom v. County of Mendocino*, 202 Cal. App. 3d 296, 311 (1988).

Instead of conducting an adequate visual impacts analysis, the IS/ND summarily concludes, without any support, that the City's Outdoor Lighting Policy would reduce potential light and glare impacts to less than significant levels. *Id.* at 19. This Policy, however, was not designed to mitigate the impacts of around-the-clock nighttime light from parking garages located just 25 feet from single-family homes. There is a fair argument that the lighting measures necessary for security at the parking garage will cause a significant impact on nearby residences. The City must prepare an EIR to analyze whether these measures conflict with the City's Outdoor Lighting Policy, and whether the Policy would effectively reduce light and glare impacts to less than significant levels.

B. The IS/ND Fails to Adequately Analyze the Project's Noise Impacts

The IS/ND fails to adequately analyze whether persons inside of the proposed office buildings will be exposed to excessive noise, especially from the two adjacent freeways. The IS/ND requires the developer to retain a qualified acoustical consultant to verify that interior noise levels can be sufficiently attenuated to 45 dBA DNL prior to the issuance of building permits. *Id.* at 46-47. But this analysis must be conducted in the IS/ND to determine whether it is possible to meet this standard. It may not be deferred until after Project approval. CEQA requires environmental review at the earliest feasible state. *Sundstrom*, 202 Cal. App. 3d at 307 ("even if a study is subject to administrative approval, it is analogous to the sort of post hoc rationalization of agency actions that has been repeatedly condemned in decisions construing CEQA").

CEQA provides that “a significant effect” requiring preparation of an EIR includes any potentially substantial adverse change of the ambient noise environment. CEQA Guidelines § 15382. Consistent with this standard, the IS/ND should have analyzed the absolute increase in noise resulting from the Project’s buildings, as well as traffic. Yet the IS/ND assumes, without any evidentiary support, that the Project itself will not generate exterior noise. *Id.* at 47. This conclusion is not possible without a description of the development’s HVAC and other exterior equipment.

The IS/ND’s noise conclusions rely in part on a standard condition that post-construction mechanical equipment shall maintain a 55 dBA DNL at residential property lines. But the IS/ND fails to analyze whether this is even possible. “Conformity with a general plan does not insulate a project from EIR review where it can be fairly argued that the project will generate significant environmental effects.” *Citizens for Responsible and Open Government v. City of Grand Terrace*, 160 Cal.App.4th 1323, 1338 (2008) (finding Project’s noise from 20 or more noisy air conditioners would have a significant environmental impact).

Expert testimony provides substantial evidence that the IS/ND failed to adequately analyze the Project’s noise impacts and that the Project could have a potentially significant noise impact. Attached to this letter is the expert opinion of Chris Papadimos, a mechanical engineer who has been consulting continuously since 1989 on building acoustics and vibration. Attachment 3. He identifies numerous deficiencies in the IS/ND noise analysis and additional mitigation measures that must be adopted. He concludes that “[w]ithout these additional studies and mitigation measures the project could have a significant noise impact on surrounding residential areas.” His opinion alone requires the City to conduct a more thorough analysis of noise impacts in an EIR. This is because CEQA Guidelines establish that where there are conflicting opinions regarding the significance of an impact, the agency must treat the impact as significant and prepare an EIR. CEQA Guidelines § 15064(f)(1); *Stanislaus Audubon Society v. County of Stanislaus*, 33 Cal.App.4th 144, 150-151 (1995).

C. The IS/ND Fails to Adequately Analyze the Project’s Air Quality Impacts.

The IS/ND provides insufficient detail regarding the proposed Project’s potential air quality impacts. To the extent that the IS/ND is citing BAAQMD’s CEQA Guidelines, it can be inferred that it is citing to the 2010 version or 2011 version. Regardless of whether it is the 2010 or 2011 version, the cited screening criteria only apply to operational emissions impacts from the Project (Chapters 3.1 and 3.3 of the

Guidelines). These criteria do *not* apply to Community Risk and Hazard Impacts (Chapters 3.2 and 5) or Construction Impacts (Chapters 3.5 and 5). While the IS/ND does acknowledge construction emissions, it fails to analyze these emissions in a quantitative manner as described in the BAAQMD CEQA Guidelines. Additional analysis must be conducted to assess these impacts.

Specifically, with respect to community risk and hazard impacts from Project operation, the IS/ND must model the local risks and hazards as described in the BAAQMD screening guidance. *See* Attached BAAQMD, Recommended Methods for Screening and Modeling Local Risks and Hazards. Attachment 4. With respect to construction impacts, the IS/ND must analyze emissions as described in the Attached BAAQMD Screening Tables for Air Toxics Evaluation During Construction. Attachment 5.

In addition, Section 5 of the 2010-11 versions of the BAAQMD CEQA Guidelines also require an analysis of other sources within 1000 feet of proposed developments. According to the BAAQMD's Google Earth files for roadways and sources, the Good Samaritan Hospital's stack is likely within 1000 feet of the proposed Project. *See* <http://www.baaqmd.gov/Divisions/Planning-and-Research/CEQA-GUIDELINES/Tools-and-Methodology.aspx>, and Attachments 6 and 7.

The IS/ND must also comply with General Plan Policy MS-11.1, which requires air quality modeling for sensitive land uses located near sources of pollution such as freeways and industrial uses.

The City has not conducted any of these air quality impact analyses. As such, it is impossible to assess the extent of the air quality impacts that will result from approval of the Project. Nonetheless, the IS/ND concludes that all of the potential air quality impacts will be less than significant, in part because of project conditions such as "maximizing the distance between the highway and the medical office building," planting trees "to help remove very fine particles of mobile sources air pollution emissions" and the installation of air filtration systems. These measures lack any quantitative requirements and there is no evidence that they would be effective.

Negative declarations cannot rely on the presumed success of mitigation measures that have not been formulated at the time of project approval. *Sundstrom*, 202 Cal.App.3d at 306-307 (1988). The "CEQA process demands that mitigation measures timely be set forth, that environmental information be complete and relevant, and that environmental decisions be made in an accountable arena." *Oro Fino Gold Mining*

Corporation v. County of El Dorado, 225 Cal.App.3d 872, 885 (1990). The IS/ND fails to meet this standard.

D. The IS/ND Fails to Adequately Analyze the Project's Traffic Impacts, Including Cumulative Impacts.

The IS/ND transportation and traffic impacts fails to analyze the potential traffic impacts to the nearby residential neighborhoods that would result from "cut-through traffic." As the traffic study makes clear, there is a potential for traffic to use Lost Oaks Drive, Carlton Avenue, and Kinghurst Drive as alternate routes, which would result in increased neighborhood traffic. IS/ND App. B at 36-37.

The IS/ND also fails to analyze potential impacts to pedestrian safety. There is a nursing home located on the corner of Samaritan Drive and National Avenue. Residents of this home walk through the neighborhood and along Samaritan Drive daily. The significant increase in traffic caused by the Project is likely to pose serious risks to these pedestrians. The IS/ND must analyze and mitigate for these risks.

Finally, the IS/ND's analysis of cumulative traffic impacts fails to comply with CEQA. CEQA requires a discussion of the environmental impacts, both direct and indirect, of the proposed Project in combination with all "closely related past, present and reasonably foreseeable probable future projects." Guidelines § 15355(b); *see also* Pub. Res. Code § 21083(b); Guidelines §§ 15021(a)(2), 15130(a), 15358. The discussion of cumulative impacts must "reflect the severity of the impacts and the likelihood of their occurrence" (Guidelines § 15130(b)), and must document its analysis with references to specific scientific and empirical evidence. *Mountain Lion Coalition v. California Fish & Game Comm'n*, 214 Cal.App.3d 1043, 1047, 1052 (1989).

In contravention of the above authorities, the IS/ND Transportation Impact Analysis does not account for all "reasonably foreseeable probable" future traffic in the area. Specifically, the Analysis acknowledges that both the Town of Los Gatos and the City of Campbell are in the process of adopting specific plans that would affect traffic volumes, but it fails to quantify or analyze these potential impacts. IS/ND, App. B at 40-41.

In the City of Campbell, the Dell Avenue Area Plan (DAAP) covers approximately 112 acres encompassing industrial and commercial properties south of Hacienda Avenue, located along Dell Avenue and Winchester Boulevard. *See* <http://www.ci.campbell.ca.us/492/Dell-Avenue-Area-Plan>. In the Town of Los Gatos, the

North 40 Specific Plan would allow for 364 housing units and 580,000 square feet of commercial uses within blocks of the proposed Project. See Attachment 8 (map of projects for cumulative impacts analysis). Given that environmental review for these projects are already underway, these are “probable future projects” that must be considered in the cumulative traffic analysis. *San Franciscans for Reasonable Growth v. City & County of San Francisco*, 151 Cal.App.3d 61 (1984).

The Draft EIR for the North 40 project concludes that the project will generate over 15,000 daily vehicle trips. Attachment 9 at 3-214 to 3-215. The IS/ND must analyze the Samaritan Court Medical Office Project’s cumulative impact with these reasonably foreseeable traffic levels. Caselaw clearly provides that when a City designates an area for future growth, the impacts of the permitted growth must be analyzed under CEQA. *City of Carmel-by-the-Sea v. Board of Supervisors of Monterey County*, 183 Cal.App.3d 229, 244 (1986).

The IS/ND attempts to avoid this analysis by concluding that “the amount of traffic that would be added due to the Samaritan Court project is minor compared to buildout of these two specific plans.” *Id.* at 41. However, a cumulative impact under CEQA must look at the project’s impacts “in combination with” other the impacts of other projects. Guidelines § 15355(b). In other words, the analysis must consider traffic levels under all of these projects as a whole, not the incremental impact that the proposed Project would have on traffic problems. The City may not approve the Project until it informs the public and decision makers of the Project’s cumulative traffic impacts.

E. The IS/ND Fails to Adequately Analyze the Project’s Greenhouse Gas “(GHG)” Impacts.

CEQA requires an analysis of a Project’s GHG emissions. CEQA Guidelines §15064.4. This must include a quantification of the Project’s estimated emissions. *Id.* (requiring a “good-faith effort . . . to describe, calculate or estimate the amount of [GHG] emissions resulting from a project); *Friends of Oroville v. City of Oroville*, 219 Cal. App. 4th 832 (2013). Given the fact that the IS/ND has already calculated the Project’s generation of automobile traffic, perhaps the largest source of the Project’s GHG emissions, it is entirely possible to estimate the Project’s GHG emissions.

The IS/ND attempts to avoid this requirement by relying on the San Jose GHG Reduction Strategy that was approved by the City in conjunction with its General Plan update. IS/ND at 34. However, in order to rely on the GHG Reduction Strategy, the Project must be consistent with the General Plan’s Land Use designation for the Project

Site. As discussed in Section I.B above, the Project conflicts with the Neighborhood/Community Commercial designation for the property because it is a regional commercial development.

Further, the IS/ND may not streamline the Project's GHG analysis by relying on the City's GHG Reduction Strategy because the GHG impacts of the City's General Plan remain significant and unavoidable, even after adoption of the GHG Reduction Strategy. General Plan DEIR at 807, 824. Under CEQA Guidelines section 15183.5, the City may only tier off of the General Plan DEIR and rely on its GHG Reduction Strategy if the General Plan's cumulative GHG impacts were mitigated to a less than insignificant level. Because they were not, the City must quantify the Project's GHG emissions and develop *additional* mitigation measures to reduce the Project's GHG impacts.

F. The Project Would Have Significant Land Use and Planning Impacts.

Because the proposed Project conflicts with the San Jose General Plan as described in Section I above, it would have significant land use and planning impacts. CEQA Guidelines Appendix G, § X(b); *The Pocket Protectors v. City of Sacramento*, 124 Cal. App. 4th 903(2005).

G. The IS/ND Fails to Adopt Adequate Mitigation Measures.

The measures proposed in the IS/ND do not provide adequate mitigation for the Project's impacts. Because the City has not fully studied this Project's impacts, it cannot propose adequate mitigation measures at this time. Conditions of approval that are discussed in the IS/ND are wholly inadequate to control significant Project impacts. As discussed above, the IS/ND Standard Project Conditions for aesthetics, noise, and air quality improperly defer mitigation or are inadequate to reduce impacts to a less than significant level.

Most fundamentally, the IS/ND is so inadequate in its description of the impacts of the proposed Project, that it is impossible to identify adequate mitigation measures. Until the City prepares an EIR that adequately analyzes all of the potentially significant impacts of the proposed Project, it cannot possibly conclude that all of the Project's impacts have been mitigated.

Finally, the City has failed to include an adequate mitigation and monitoring program providing for enforceable mitigation measures as required by Public Resources

Code section 21081.6. It attempts to avoid this requirement by characterizing all mitigation measures as "standard project conditions," even when those measures are not required by existing codes as regulations. This approach does not comply with CEQA. Pub. Res. Code §21081.6.

III. Conclusion

The law is very clear that an agency may not rely on a negative declaration if there is substantial evidence in the record to support a fair argument that a project may have a significant impact on the environment. Pub. Res. Code § 21080(c)(1). Even if there is evidence in the record that a project will not have a significant environmental impact, substantial evidence in the record that it may have such an impact requires preparation of an EIR. As set forth in this letter, this Project will have significant environmental impacts that have not been sufficiently addressed by the City, let alone mitigated. In addition, the Project conflicts with numerous General Plan policies. As such, the City must require significant revisions to the proposed Project and prepare an environmental impact report that evaluates the revised Project before it can be approved.

Very truly yours,

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